



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Sharon Le Duy
Law Offices of Sharon Le Duy
1221 Bridgeway
Sausalito, California 94965

MAR 25 2009

RE: MUR 6065
Politicalbase.com

Dear Ms. Le Duy:

On September 11, 2008, the Federal Election Commission notified your client, Politicalbase.com, of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended. On March 10, 2009, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Politicalbase.com violated 2 U.S.C. § 438(a)(4). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1548.

Sincerely,

A handwritten signature in black ink, appearing to read "Ana Pena-Wallace".

Ana Pena-Wallace
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: PoliticalBase.com

MUR: 6065

This matter was generated by a complaint filed with the Federal Election Commission by Charisse C. Wilson. *See* 2 U.S.C. § 437g(a)(1).

I. Factual Summary

Complainant made federal political contributions such that her name and other information were required to be disclosed by the recipient political committees in their publicly available FEC disclosure reports. *See* 2 U.S.C. §§ 432(c) and 434(b)(3)(A) and 11 C.F.R. § 104.8(a). Complainant alleges that PoliticalBase.com is using contributor information from the Federal Election Commission campaign finance disclosure database for commercial purposes, in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 of the Federal Election Campaign Act, as amended (“the Act”), and the Commission’s implementing regulation, respectively.

PoliticalBase.com is a news and opinion website. It does not charge a fee or require users to subscribe to see the contributor information. PoliticalBase.com does not accept advertisements at the present time. PoliticalBase.com, owned and operated by Whiskey Media, focuses solely on politics and began operations this past summer. Its content is provided by employees, bloggers, and wire services.

PoliticalBase.com obtains its data from the Commission’s disclosure database and manipulates it to offer more ways to search it than available on the Commission website. For example, PoliticalBase.com offers users the ability to search federal political contributions by

occupation, address, employer, and name. In addition, the website provides a mapping feature, which pinpoints and displays a contributor's address and location on a map.

Complainant alleges that respondent's posting of her personal information violates the Act and makes her a "prime prospect" for receiving solicitations. Complainant also alleges that by publishing contributors' names, addresses, employers, and contribution amounts, PoliticalBase.com's contributor information pages achieve a high search ranking on Google when using a person's name as the search term, and because the price for the banner ads on those web pages is based on the search ranking, the respondent is receiving revenue by using contributor information in a commercial manner. Finally, complainant alleges that her privacy has been violated, and she requests that the website be disabled from using the FEC contributor information.

II. Legal Analysis

The Act and the Commission's regulations require that the Commission "make [reports and statements filed with it] available for public inspection, and copying, at the expense of the person requesting such copying, except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. § 438(a)(4). "The § 438(a)(4) prohibition is . . . violated by a use of FEC data which could subject the 'public-spirited' citizens who contribute to political campaigns to 'all kinds of solicitations'." *Federal Election Comm'n v. Political Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991) ("PCD").

The regulations, however, articulate a media exemption from the prohibition for the use of FEC data in "newspapers, magazines, books or other similar communications . . . as long as

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the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.” 11 C.F.R. § 104.15(c). In the *PCD* case, the court likened PCD’s data collection service to a media organization’s information disclosure function. *PCD*, 943 F.2d at 195. The court found that the information distributed by PCD was not organized in a manner designed to facilitate solicitations for contributions, and that there was no evidence that any of its customers were using it for that purpose. *Id.* at 196-97. Respondent claims that it comes within the media exemption for newspapers, magazines and books and other similar communications. It argues that as a news and opinion website, publishing contributor information is not its principal purpose, much less a commercial purpose, and thus, it is not violating the Act.

A. Respondent is Similar to Newspapers and Magazines

Respondent claims to be a news and opinion website because it publishes articles, commentary and other original content. First, PoliticalBase.com is similar to traditional media in that much like an online magazine, it offers wire stories, original articles, commentary, poll tracking and discussion forums. *See* 11 C.F.R. § 104.15(c). *Cf.* MUR 5928 (Kos Media, LLC) (Commission found no reason to believe respondent violated expenditure limitations of the Act because DailyKos “qualifies as a media entity ... DailyKos is available to the general public and is the online equivalent of a newspaper, magazine, or other periodical publication. Additionally, DailyKos is precisely the type of online media presence the Commission contemplated when revising the media exemption”).¹

¹ In its “Internet Communications” Explanation and Justification, the Commission expanded the scope of the “expenditure” media exemption to include “media entities that cover or carry news stories, commentary, and editorials on the Internet.” 71 Fed. Reg. 18589, 18608 (April 12, 2006).

Second, the respondent's principal purpose in communicating the information appears to be informational. 11 C.F.R. § 104.15(c). As discussed below, PoliticalBase.com is not selling any service in connection with the data, and it does not charge users to view the data. Further, there is no information that PoliticalBase.com is publishing the FEC information for the purpose of soliciting contributions or for another commercial purpose.

B. Respondent is not Selling Contributor Information

PoliticalBase.com is not using the contributor information for a commercial purpose. See 2 U.S.C. § 438(a)(4). Respondent does not charge users a fee to view political contributor information on its website. This distinguishes it from *FEC v. Legi-Tech*, 967 F. Supp. 523 (D.D.C. 1997) (selling donor information in list form for solicitation purpose violates Act). Also, there is no indication that PoliticalBase.com is soliciting contributions on its website.

In a similar situation, the Commission found that an analogous use of FEC data did not violate the Act. In MUR 5155 (*Friends for a Democratic White House et al.*), the Commission considered whether the Political Money Line website, which like PoliticalBase.com, provided a free contributor search function on its website, was making commercial use of contribution data. The Commission determined that although Political Money Line did charge users for some services, the information available for a fee did not include any additional information with respect to individual donors that was not also readily available on the non-subscription side of the website.² It follows, therefore, that merely copying the FEC contributor information and letting users view it without charge is not a commercial purpose. See also *PCD*, 943 F.2d at 196

² After an investigation, the Commission took no further action as to TRKC, Inc., the operator of Political Money Line.

(even though PCD is selling information, its stated purpose – to further research and reporting on patterns of political contributions – is not a commercial use).

The complainant alleges that the posting of her address makes her a prime prospect for various solicitations such as cars, credit cards, magazine subscriptions and vacation trips.

Complainant does not say whether she in fact received solicitations as a result of the information on respondent's website and, if so, how she knows PoliticalBase.com was the source. Numerous on-line sources, including the FEC's website itself, and off-line sources, such as the Commission's Public Records Office, also allow users to view and obtain complainant's address. Moreover, although complainant points specifically to the mapping function on respondent's website as particularly disturbing, the map does not provide additional personal or otherwise useful information that is not available elsewhere.

Complainant also alleges that PoliticalBase.com is viewed by more people because the contributor information pages achieve a high Google search ranking. She argues that the high search ranking could generate more advertising revenue for respondent, even though respondent does not at the present time accept advertising, and thus, the use of the contribution information could be commercial. Complainant is basically arguing that for-profit status could convert a use of FEC contributor information into a *per se* commercial use. Such an argument has already failed. *See PCD*, 943 F.2d at 196 (commercial use media exemption available to for-profit companies).

C. Conclusion

In sum, PoliticalBase.com is similar to a newspaper or magazine, and its principal purpose in displaying the contributor information appears to be informational. *See PCD*, 943

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F.2d at 196-97. Therefore, PoliticalBase.com comes within the exemption at 11 C.F.R.

§ 104.15(c) for using FEC contribution information. In addition, it does not appear that respondent uses FEC contributor information "for a commercial purpose," as that term has been interpreted by the Commission and the U.S. Court of Appeals for the Second Circuit in the *PCD* case.

Therefore, there is no reason to believe that PoliticalBase.com violated 2 U.S.C. § 438(a)(4).

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